



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Montana State Office
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Billings, Montana 59101-4669
<http://www.blm.gov/mt>



In Reply Refer To:

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June 25, 2009

FILE COPY

CERTIFIED-RETURN RECEIPT REQUESTED

DECISION

Mr. Ben Deeble
Sage Grouse Project Coordinator
National Wildlife Federation
Northern Rockies Project Office
240 North Higgins, No. 2
Missoula, Montana 59802

PROTEST DISMISSED

On June 1, 2009, we received your protest filed on behalf of the National Wildlife Federation (NWF) (Enclosure 1). You protested the June 16, 2009, competitive oil and gas lease sale as to three parcels located within our Dillon Field Office (FO): MT-06-09-14, MT-06-09-18, and MT-06-09-20.

In your protest, you asked that these three parcels be withdrawn from the BLM's June 16, 2009, competitive oil and gas lease sale based on the following three factors:

1. You believe that new research makes clear the proposed wildlife stipulations for the protested parcels pertaining to greater sage-grouse are inadequate to protect breeding lek complexes from negative stressors presented by potential energy development;
2. BLM has formally agreed to consult with the Montana Fish, Wildlife and Parks (FWP) regarding leasing decisions in order to protect sage-grouse and other wildlife, and that FWP does not concur that the proposed stipulations are adequate for sage-grouse;
3. The protested lease parcels are within "core area" habitats of sage-grouse, those deemed most important for conservation of this species statewide.

Response: The following are our responses to your three factors regarding withdrawal of the three leases from the June 16, 2009, competitive oil and gas lease sale.

1. Protective stipulations for sage-grouse required by the Dillon RMP were applied to the three protested parcels. The Proposed Dillon RMP and Final EIS was approved in April 2005. The Record of Decision (ROD) and Approved Dillon RMP were adopted in February 2006.

The applicable protective stipulation (TL 13-6) for sage-grouse was applied. The other two stipulations adopted in the ROD were not needed based on a review by the Dillon FO.

“Resource: Sage-Grouse Breeding Habitat

Stipulation: Timing Limitation. Activity is restricted from March 1 through June 30 in nesting and early brood-rearing habitat (defined as within 3 miles of leks).

Objective: To protect sage-grouse leks and breeding habitat necessary for long-term maintenance of regional sage grouse populations.

As noted above, stipulation TL 13-6 was developed for the Dillon RMP for the preferred alternative and included in the ROD/Approved RMP. Under this alternative, the timing limitation applied to sage-grouse breeding habitats is based on a 3-mile buffer given local circumstances and additional information available for the Dillon planning area rather than a more generally accepted 2-mile buffer. Radio telemetry studies in southwest Montana indicate that some populations of sage-grouse are migratory and move considerable distances during their annual life cycle, including during their nesting season. In addition, habitat in the planning area is unevenly distributed. Based on guidelines of the Western Association of Fish and Wildlife Agencies, a 5 kilometer buffer, approximately 3 miles, was recommended for unevenly distributed habitats. The timing restriction applies to potentially suitable sage-grouse habitat.

Timeframes for the timing limitation have also been adjusted to limit use from March 1 through June 30 rather than March 15 through June 15 as has been typical in Montana. This is because higher elevations in the southwest part of Montana (in comparison to eastern Montana) result in later use of breeding and nesting areas in certain portions of the Dillon planning area.

The research studies you referenced in your protest were conducted within areas with active oil and gas development. At this time, there are no producing wells in the Dillon FO. However, the BLM developed a Reasonably Foreseeable Development Scenario (RFD) for the Dillon RMP based on analysis of the oil and gas occurrence and development potential in the area. This RFD estimates that six wildcat wells could be drilled in the planning area within the next 10 to 15 years (a “wildcat well” is an exploratory well drilled in an area with no existing production). Of these six wells, the BLM believes that four would be dry holes. Dry holes would be plugged and abandoned with surface reclamation occurring shortly afterward. For analysis purposes, oil and/or gas production is assumed in the RFD scenario. It is believed that two of the wells could likely have gas discoveries (however, there is a smaller chance of oil production). Of the two discoveries, it is projected that one producer would be developed on Federal minerals and the other would be on privately-owned minerals. Each of those wells would probably prompt additional step-out wells (a “step-out well” is a well drilled adjacent to or near a proven well to establish the limits of the oil or gas reservoir). The RFD scenario projects that a total of four step-out wells would be drilled in the FO, two for each discovery. Due to the expectation that gas wells would be the primary target in the FO, spacing for these wells will be one well per square mile. Therefore, the BLM does not expect well pad densities in the area of sage-grouse leks in Madison and Beaverhead Counties to exceed one well per square mile, and does not anticipate the kind of “full field development” assessed in the cited research and related impacts to lek persistence. If RFD predictions were exceeded to a degree anticipated to cause additional

impacts, the Dillon RMP and RFD would be revisited to identify needed action if any. The NWF has not established that BLM committed a clear error of law or demonstrable error of fact, or provide any significant new information to support deferring leasing of the protested parcels.

Finally, at this point, we would like to note that the BLM received only general comments from the FWP during the comment period on the Draft Dillon RMP. The most applicable comment urged that all objectives for sage-grouse outlined in the RMP be implemented as standards. The BLM responded that guidelines would be used in addressing specific habitat issues at the project level. We did not receive comments that specifically addressed proposed oil and gas mitigation measures, including those for sage-grouse.

2. The FWP was consulted on the protested parcels on January 29, 2009, as established in our existing procedures (Enclosure 2). They responded in writing on February 18, 2009 (Enclosure 3), with the following general comments:

“As...mentioned in comments on other proposed leases, Fish, Wildlife and Parks recommends a No Surface Occupancy (NSO) Stipulation within 2 miles and a Timing Limitation Stipulation (March 1 to June 30) out to 4 miles for known sage-grouse leks. We make this request only to maintain the probability of leks persisting at full field development. We desire to be proactive with sage-grouse and their habitats particularly given the USFWS status review.”

They went on further in their general comments to note that all the parcels listed in the table attached to their letter for which stipulation NSO 11-4 should be attached, including the protested parcels, were within 4 miles of active leks. We address this below.

The following specific comments from the FWP apply to the protested parcels. The FWP commented that Parcels MT-06-09-14, MT-06-09-18 and MT-06-09-20 are within 4 miles of a sage-grouse lek and, therefore, stipulation NSO 11-4 should apply. The BLM's response (Enclosure 4) was that relative to parcels MT-06-09-14, MT-06-09-18 and MT-06-09-20, stipulation NSO 11-4 is not appropriate since this stipulation applies to areas within ¼ mile of a lek. There is not a lek within ¼ mile of these leases.

These decisions concerning lease stipulations are based on the ROD and Approved RMP for the Dillon RMP. Also as noted earlier, the RFD scenario for the Dillon RMP indicates that the chance of anything other than a low level of oil and gas activity in the Dillon FO is low.

3. The BLM acknowledges that the three protested parcels are within the FWP sage-grouse core area. We understand that these are defined by the FWP as sage-grouse habitat areas associated with either Montana's highest densities of sage-grouse and/or sage-grouse lek complexes and associated habitat important to sage-grouse distribution. However, based on the uneven distribution of sage-grouse habitat in the FO and the low level of development activity forecast in the RFD for the Dillon RMP, which is described above, the BLM believes that no negative impacts to the core area can be reasonably forecast. Applicable stipulations from the Dillon RMP are being applied on BLM-administered lands.

Decision: As noted earlier, your protest is dismissed. This Decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations

contained in 43 CFR Part 4.21(a) (Enclosure 5) and the enclosed Form 1842-1 (Enclosure 6). If an appeal is taken, the Notice of Appeal must be filed in the Montana State Office at the above address within 30 days from receipt of this Decision. The appellant has the burden of showing that the decision appealed from is in error. If you wish to file a petition for a stay pursuant to 43 CER Part 4, Subpart B §4.21, during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

Copies of the Notice of Appeal, Petition for Stay, and any statement of reasons, written arguments or briefs must also be submitted to the Office of the Solicitor at the address shown on Form 1842-1 at the same time the original documents are filed in this office.

We received no bids on the three protested parcels at the June 16, 2009, competitive oil and gas lease sale. Nor did we receive noncompetitive offers on the day after the competitive sale.

/s/ Gene R. Terland

Gene R. Terland
State Director

Enclosures

- 1-Protest of June 1, 2009 (5 pp)
- 2-BLM Letter of January 29, 2009 (1 p)
- 3-FWP Letter of February 18, 2009 (4 pp)
- 4-BLM Letter of February 24, 2009 (4 pp)
- 5-43 CFR 4.21(a) (2 pp)
- 6-Form 1842-1 (1 p)

cc: (w/encls.)

Field Manager, Dillon Field Office